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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 30th November, 2015

+ **W.P.(C) No.7178/2013**
JAI SINGH Petitioner
Versus
GOVT. OF NCT OF DELHI & ORS Respondents

+ **W.P.(C) No.7211/2013**
RAKESH Petitioner
Versus
GOVT. OF NCT OF DELHI & ORS Respondents

+ **W.P.(C) No. 4740/2014**
RAI SINGH Petitioner
Versus
GOVT. OF NCT DELHI & ORS Respondents

Counsel for the petitioners:-

Ms. Richa Singh, Adv.

Counsels for the respondents:-

Mr. Anuj Aggarwal, ASC for GNCTD.

Mr. Santosh Kumar Tripathi, ASC for GNCTD.

Mr. Rana Sandeep, Mr. Kamaldeep Singh, Mr. Vivek and Mr. P. Rakesh, Adv.

Mr. Daleep Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Each of the three petitions impugns the same order dated 10th September, 2013 of the Sub Divisional Magistrate (SDM), Narela holding that the scheduled caste certificates issued to each of the petitioners, showing his caste as *Agria* is illegal and thus cancelling the certificates and declaring them as null and void. The petitions also seek a direction to the respondents Government of National Capital Territory of Delhi (GNCTD) and SDM, Narela to treat the petitioners as belonging to *Agria* caste. Since the impugned order holds the petitioners to be not belonging to the *Agria* caste but belonging to the *Agri* caste *inter alia* on the basis of the entry in the Revenue Records showing the petitioners as belonging to the *Agri* caste, the petitions also seek a direction to the respondents to correct the entry in the Revenue Records showing them as having *Agri* caste to that of *Agria* caste. Axiomatically, the restoration of the Scheduled Caste (SC) Certificates earlier issued to the petitioners and which have been cancelled by the impugned order dated 10th September, 2013 is also sought.

2. The petitioners, as respondents no.3 to the petitions have impleaded Shri Raje Ram on whose complaint the proceedings for cancelling of the SC certificates of the petitioners were commenced (the counsel for the petitioners clarifies that Shri Raje Ram had complained only against the petitioner in W.P.(C) No.4740/2014 and not against the petitioners in the other two petitions).

3. The petitions were entertained and counter affidavits have been filed on behalf of the respondents GNCTD/SDM, Narela and the said Raje Ram. No rejoinders have been filed by the petitioners despite opportunity. The counsels have been heard and the record of SDM, Narela requisitioned in

this Court perused.

4. These writ petitions in fact are a second round of litigation on the subject. The petitioners had earlier filed W.P.(C) No.2563/2011, 5471/2011 and 5472/2011 impugning the orders then issued of cancellation of their SC certificates. Finding that the order of cancellation had been issued without hearing the petitioners, the said writ petitions were allowed vide order dated 9th August, 2011 and directions issued for providing opportunity of hearing to the petitioners and to dispose of the complaint of Shri Raje Ram and the proceedings for cancellation of the SC certificates of the petitioners by a reasoned order. The impugned order has been passed after holding an inquiry including by examination and cross examination of witnesses and comprising of over 700 pages.

5. The challenge by the petitioners to the order of the SDM, Narela is not on the grounds of non-compliance of the principles of natural justice or the petitioners having not been given proper opportunity during the proceedings. On the contrary, the challenge by the petitioners to the order of the SDM, Narela is on merits of the said order. The counsel for the petitioners impugns the conclusion on merits reached by the SDM, Narela on the basis of documentary and oral evidence recorded before him. It has as such at the outset been enquired whether in exercise of jurisdiction under Article 226 of the Constitution of India this Court is to act as an Appellate Authority of the SDM, Narela and to reappraise evidence to determine whether the conclusion of the SDM, Narela of the petitioners not belonging to a scheduled caste is correct. Supreme Court, in ***Kumari Madhuri Patila***

Vs. Addl. Commissioner, Tribal Development (1994) 6 SCC 241, in the context of a caste certificate held that the High Court is not a Court of appeal to appreciate the evidence; the Committee which is empowered to evaluate the evidence placed before it, when records a finding of fact, it ought to prevail unless found vitiated by judicial review of any High Court, subject to limitations of interference with findings of fact. It was further held that the Committee, when considers all the material facts and records a finding, though another view, as a Court of Appeal may be possible, it is not a ground to reverse the finding. The Supreme Court held that the High Court, in exercise of powers of judicial review, has to only see whether the committee considers of the relevant material placed before it or has not applied its mind to relevant facts and which have led the Committee to ultimately record the finding. Recently also in *Jogendrasinhji Vijaysinghji Vs. State of Gujarat* (2015) 9 SCC 1 it was reiterated that however extensive the jurisdiction of the High Court under Article 226 may be, it is not so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made.

6. The counsel for the petitioners has contended that since there is no other remedy available against the order of the SDM, Narela, this Court in writ remedy only would be required to go into the said factual controversy.

7. The counsel for the respondent GNCTD also confirms that there is no appellate remedy or other fora provided which the petitioners can approach with respect to the findings of the SDM, Narela.

8. The counsel for the private respondent Shri Raje Ram of course has supported the findings in the impugned order and has contended that the petitioners had falsely obtained the SC certificates and which have been now rightly cancelled by the SDM, Narela. He also states that though the private respondent had complained against the petitioner in W.P.(C) No.4740/2014 only but during the course of proceedings it was found that other two petitioners who are also nephews of the petitioner in W.P.(C) No.4740/2014 had falsely obtained the SC certificates and accordingly they were also impleaded to the proceedings and while cancelling the SC certificate of the petitioner in W.P.(C) No.4740/2014 the SC certificates of the other two petitioners has also been cancelled.

9. The counsel for the petitioners rejoins and denies that the other two petitioners are related to the petitioners in W.P.(C) No.4740/2014.

10. In my view, merely because no appellate remedy is available against the order of the SDM, Narela or there is no other fora which the petitioners can approach would not justify entertaining the writ petition, beyond the scope thereof, converting the writ remedy into appellate remedy.

11. The determination of caste is a question of fact and such factual findings can neither be returned in writ jurisdiction nor can factual findings reached by authorities competent to determine the same be disturbed in writ jurisdiction unless they have been reached without following the prescribed procedure or the principles of natural justice or are found to be totally *de hors* material on record.

12. The present controversy does not lie in either of the aforesaid

categories. The challenge by the petitioners is to the appreciation by the SDM, Narela of the evidence led before him and the conclusions reached by the SDM, Narela on the basis thereof. Such an exercise, in my view, can be gone into only in Original Suit jurisdiction of the Courts and if the Civil Court finds the petitioners to be belonging to the scheduled caste of *Agria*, the said finding of the Civil Court would naturally prevail over the finding of the SDM, Narela.

13. The remedy of the petitioners thus, to challenge the order of the SDM, Narela and/or to have themselves declared as belonging to *Agria* caste, is before the Civil Court.

14. The determination of caste is based on various factors viz entries in school register showing father's caste, the caste of parents at the time of birth, affinity to cultural tribe or caste, anthropological and ethnological perspectives relevant for determining caste of the person etc. Such determination would necessarily entail leading of evidence on behalf of the both sides. Such determination can be done either by the Statutory Authorities competent to do so or by Civil Courts of competent jurisdiction. This was so held by a Division Bench of the High Court of Patna in judgment dated 19th January, 2015 in LPA 1657/2014 titled ***Bibi Sabnam @ Sabnam Khatoon vs The State Election Commission***. Similarly a Division Bench of the High Court of Jharkhand also in ***Dhaneshwar Karmali Vs. Commissioner, North Chotanagpur Division*** MANU/JH/1279/2009 held that the question, to which caste a person belongs to, is a question of fact and can be determined only by the competent authority under the rules and unless that is determined, no benefits of belonging to that caste can be given

to the person. Similarly, the High Court of Andhra Pradesh also in ***Bodasingi Satyanarayana Vs. The State of A.P.*** MANU/AP/1013/2013 held that the caste of an individual is a question of fact to be determined on the basis of evidence to be adduced, when it is disputed. Mention may lastly be made of the judgment of the Division bench of the High Court of Allahabad in ***Gond Adivasi Sabha Vs. State of U.P.*** MANU/UP/0676/1986 holding that the question whether a person belongs to a particular caste or not is a matter of factual inquiry.

15. Supreme Court also, in ***Punit Rai Vs. Dinesh Chaudhary*** (2003) 8 SCC 204, observed that the question, whether a person belongs to a particular caste or not has to be determined by the Statutory Authorities specified therefor. Again in ***Rameshbhai Dabhai Naika Vs. State of Gujarat*** (2012) 3 SCC 400, in the context of inter caste marriage, it was held that the determination of caste of the offspring is essentially a question of fact to be decided on the basis of facts adduced in each case.

16. Here, the Statutory Authority has already returned a finding of the petitioners not belonging to the scheduled caste to which they claim to belong. No case for interference therewith in exercise of powers of judicial review having been made out, the petitioners, if desire to challenge the finding of Statutory Authority, have to resort to a suit.

17. The petitions are thus disposed of with liberty to the petitioners to approach the Civil Court challenging the order of the SDM, Narela as well as for declaration of belonging to the *Agria* caste.

18. Since notice of the writ petitions was issued and the writ petitions

have remained pending in this Court for a sufficiently long time and to obviate any difficulty if any encountered by the petitioners on account of limitation before the Civil Court, it is further directed that subject to the petitioners instituting the Suit on or before 31st March, 2016, the same shall be entertained on merits and without considering the bar of limitation.

19. The counsel for the petitioners at this stage states that there is an interim order in W.P.(C) No.4740/2014 staying consequential proceedings initiated against the petitioner therein who had on the basis of the SC certificate obtained employment as a Conductor in Delhi Transport Corporation (DTC).

20. The said order is extended till 31st December, 2015 to enable the petitioner as aforesaid to approach the Civil Court. The Civil Court shall however thereafter decide the need for continuing the same after examining the merits of the case presented before it and without being influenced in any manner by the stay granted earlier by this Court in as much as the same was *ex parte* and the occasion for confirming the same did not arise.

21. It is further clarified that Shri Raje Ram shall also be impleaded as defendant in all the suits.

No costs.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 30, 2015

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